Dominant Air Power: Design For Tomorrow...Deliver Today

Services Contracts – "A Refresher"

Sept 06

U.S. AIR FORCE

Outline

- Background
- Supplies vs. Services
- Principal Purpose
- ACRONYMS – services lingo
- AFI 63-124 (PBSA/ SDS)
- Labor Laws (SCA/DBA/WHA)
- MOASP (PEO for services)
- Notification/Approval Levels (Mar 06)
- Common Myths
- AF Vulnerabilities (CLS)
- Fair opportunities Clause (Multiple Award ID/IQs)
- Take-a way's
- Additional Guidance

Background

- **Services Contracts are receiving more attention than ever before.**
- **Today,** over half of our AF dollars **are spent on service acquisitions.**
- **This trend has impacted the traditional way we look at service acquisitions.**
- **It has also** increased the degree of scrutiny and surveillance **of contracting for services.**
- **The purpose of this briefing is to increase your familiarization of services contracts in today's changing environment of increased scrutiny.**

Is it a Service?

- How do I know if I am buying a supply or service?
- Who makes the decision?
- How do I make that decision
- Why is it important?

Shocking

Results!

Supplies vs. Services

- **Supply:**
  - **“ Property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing.”**

    FAR 2.101

    …the alteration or installation of any of the foregoing. This is when the service is incidental to the supply.

Supplies vs. Service

- **Supply features:**
  - **It is a tangible item - Can be held in-stock**
  - **Can be repaired - Can be bought using a NSN**
  - **Can be maintained - Can be rebuilt**
  - **Can be overhauled - Can be salvaged**
  - **Can be depreciated**

Supplies vs. Services

- **Service features:**
  - **We are buying effort/time/knowledge**
  - **Contractor is performing an identifiable task**
  - **Can be personal or non-personal**
  - **May be performed on an end item we OWN**
  - **We are buying a solution**
  - **There may not have a tangible end item as a deliverable**
  - **Cannot be ordered by part number**
  - **Cannot be duplicated identically**

Supplies vs. Services

- **Services Definition:**
  - **A contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply.**
    (FAR 37.101)

Layman's Definitions

Service (verb)**--Work done to already owned items (such as repair) or work done to fulfill requirements related to an idea or process. For example, finding innovative ways to protect computer systems from attack would be an owned responsibility; a report may be issued later in order to document the results of the study.**

Supply (noun)**--Normally tangible item that can be acquired using a stock or item number. The item may also be developed from specifications.**

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CHARACTERISTICS OF SUPPLIES AND SERVICES

Characteristics	Supply	Service
It is a tangible item	●	
Can be repaired	●	
Can be held in-stock	●	
Can be bought using a NSN (National Stock Number)	●	
Can be property	●	
Can be maintained	●	
Is bought through a distributor	●	
Can be overhauled	●	
Can be rebuilt	●	
Can be salvaged	●	
Can be thrown away	●	
Can be returned	●	
Can be recycled	●	

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Can be recycled	●	
Can be transported	●	
Can be touched	●	
can be bought off-the-shelf	●	
Can be depreciated	●	
We are buying labor hours		●
We are buying an effort		●
Contractor is performing an identifiable task		●
Can be personal or non-personal		●
may be performed on an end item		●
We are buying a solution		●
May not have a tangible end item		●
We are buying an idea		●

Repair, Maintenance, Overhaul, and Remanufacturing of Supplies already owned by the Government are considered to be Services. Click here for more information.

Questions or Comments Regarding this Web Page?

Content Questions: Please contact Ms. Becky Gebhard at DSN 986-0358.
Web Page Questions: Please contact Ms. Lois Todd at DSN 986-0379.

Return to the Services Tool Homepage!

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Principal Purpose

- **Contract intent or "principal purpose is determined by the requirements of the contract**
- **No hard and fast rule as to the precise meaning of the term principal purpose**
- **Price may be considered, but rarely the defining factor**

Helpful Hints

- **Is the principal intent a task or a thing?**
- **Which is incidental to the other, which is more important?**
- **Does it result in a tangible item not previously owned?**
- **Estimated $’s spent on each portion should be considered, but not sole determinant.**
- **Principal purpose is what determines if a contract is for supplies or services.**
- **A report does not determine. Completing of a report is a “service” (labor effort) and NOT a supply (the actual report).**

Services Acronyms

- **PBSA – Performance Based Services Acquisition – AFI 63-124**
- **SDS – Service Delivery Summary**
- **QAPC – Quality Assurance Program Monitor**
- **QAP – Quality Assurance Personnel**
- **MOASP – Management and Oversight of Acquisition of Services Process**
- **DO – Designated Official**
- **AF/PEO/CM – PEO for Services > $100M**

AFI 63-124 (Aug 05)

- **Directs performance based procedures for acquiring services within the AF (PBSA)**
- **Performance Work Statements (PWS) that state “results’ not “processes”**
- **Applies to all service acquisitions above Simplified Acquisition Threshold (SAT) $100K**
- **Four exceptions: A&E, construction, utility services and services that are incidental to supply purchases**

Labor Laws

- **Most AF contracts will require the application of one or more of "three" key labor laws.**
- **Services contracts – generally SCA (exemptions exist for professional employees)**
- **Construction contracts – Davis Bacon Act**
- **Supply contracts – Walsh- Healy Act**
- **Hybrid contracts- may require all three**
- **Basic intent is to ensure contractors pay employees at least a minimum level of wages**

Labor Laws - Microsoft Internet Explorer
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Address https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkv/services_tool/labor_laws.htm
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Click here for Service Contract Act - Wage Determinations

Acquisition	LABOR LAWS			
	SCA	SCA Exempt (Professional)	DBA	WHA
A&AS		●		
A&E		●		
BOSS	●			
CLS	●			
COMBS	●			
CONSTRUCTION +	●		●	
END ITEM	●			
MAINTENANCE				●
OVERHAUL	●			
R&D *		●		
REMANUFACTURING +				●
REPAIR	●			
TRANSPORTATION	●			

+ The DBA almost always applies to painting because of the strong statutory language including it as a "construction activity".
* Contracts for research and development are not specifically exempt from SCA. If there are a significant number of service employees, the SCA would be applicable. If service employees are only a minor factor and professional employees are performing these services, the the SCA would NOT apply. Also, R&D contracting offices (just as any other contracting office) can let contracts that are subject to any of the applicable labor laws.
+ The inclusion of WHA does not make remanufacturing a supply. It is still considered a service, however, a different labor law applies.

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MOASP

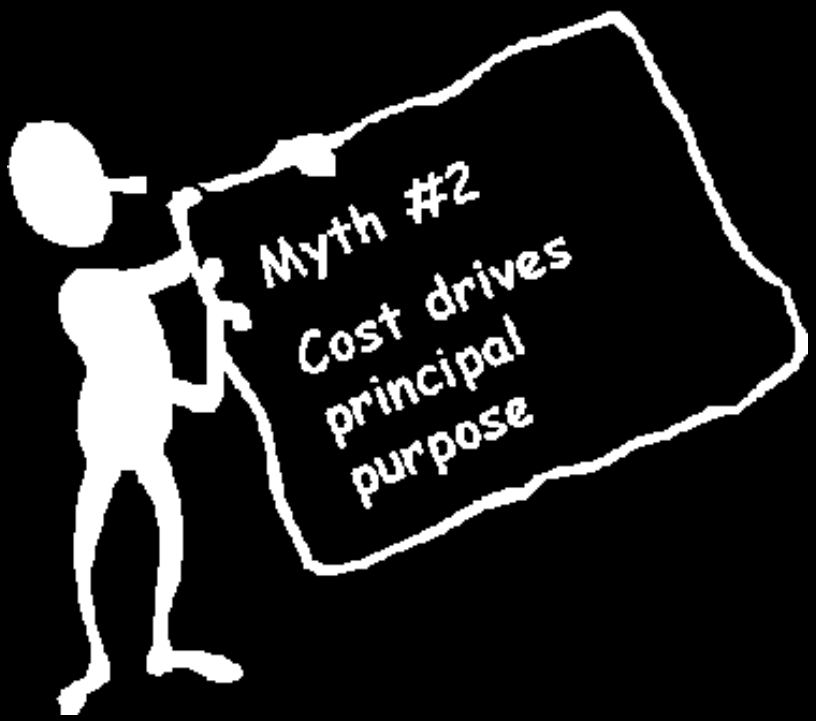
- **MOASP stands for Management and Oversight of Acquisition of Services Process.**
- **Purpose – Implements section 801 of the NDAA Act 02 requiring more oversight of the acquisition of services**
- **Applicable to all service contracts over SAT**
- **Implements specific review and requirements**
- **Created a new PEO for Services AFPEO/CM**
  - **(personally manage acquisitions >**

HQ AFMC Notification of services contracts over $10M

- **Awaiting SAF/AQX implementation instructions. Continue to follow interim procedures as outlined by HQ AFMC/PK email dated 7 April 06.**
- **Currently a notification process exists pending SAF official guidance. For packages over $10M, General Carlson wants to see the center's CC coordination on the package prior to sending it to HQ AFMC.**
- **DoD letter dated 27 March 06 directed all service contracts exceeding $10M be approved by MAJCOM/CCs and any be approved by al letter states contracts", but this has been clarified to include all services.**

ORIGIN: SCA is an acronym for Service Contract Act. Because the words “service contract” are in the name of the Act it is natural to assume that all service contracts are covered by the SCA.

FACT: The Service Contract Act was created to ensure that service employees are paid a fair wage. There are several services that are exempt from SCA, including (but, not limited to) maintenance and repair of certain types of equipment, services provided by professionals, construction, and work done in accordance with the Walsh-Healey Act. “Whether or not the [SCA] applies to a specific service contract will be determined by the definitions and exceptions given in the act, or implementing regulations.” (FAR 37) For more information on labor laws, see FAR 22.



ORIGIN: When a contract has both supplies and services, it is known as a hybrid contract. Hybrid contracts pose a unique challenge when it comes to contract reporting. Do you code the DD Form 350 as a supply or service? A contract is coded as a service if the principal purpose of the contract is services. The myth states that if you pay more for supplies than services, the contract is a supply contract and vice versa.

FACT: Principal purpose is not determined by price nor percentage of work. It is determined by what the intent of the contract is. The term “intent” is a bit ambiguous—it’s not determined by cost or percentage of work. Rather, it is determined by what you most hope to accomplish by the contract.

ORIGIN: This myth originates from two misconceptions. The first is that all service contracts must be performance-based. The second is that if a service contract isn't PBSA it will count against reporting goals.

FACT: Not all service contracts are required to be PBSA! If PBSA is contrary to good business sense, you don't have to use it. In fact, some service contracts are not subject to PBSA requirements! Research and Development contracts that use 6.5 and 6.6 money are subject to PBSA. Myth 8 covers reporting goals.

ORIGIN: Part 35 of the FAR states: “Unlike contracts for supplies and services, most R&D contracts are directed toward objectives for which the work or methods cannot be precisely described in advance.”

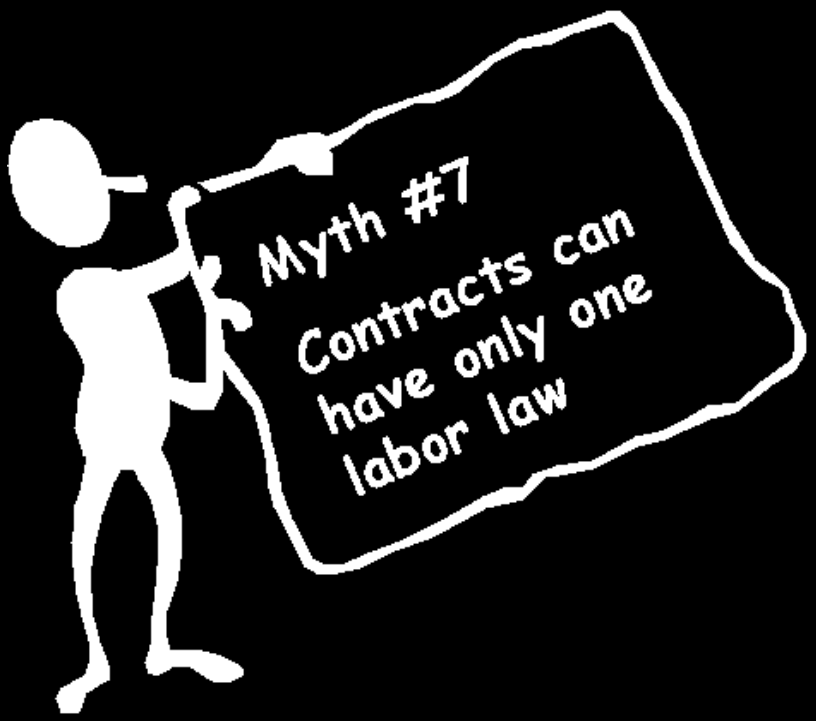
FACT: There are only two major types of purchase—supplies and services. Research and development is a specialized type of service, just as construction, architect-engineering and contracted logistic support are special types of services. The Air Force Program Executive Officer for Services (AFPEO/SV) has stated that R&D contracts more closely resemble services than supplies. We are working to clean up the language in the regulations so that this distinction is clear.

ORIGIN: Repair, maintenance and overhaul are covered by SCA. Major overhaul that meets the criteria for remanufacturing (see FAR 22.1003-6) is covered by Walsh-Healey Public Contracts Act.

FACT: The regulation is commonly misread to say that remanufacturing is coded as a supply. What the regulation says is that when overhaul becomes remanufacturing it is subject to a different labor law. It does not say that the classification as a service is changed. *Labor laws do not determine whether a contract is for supplies or services.* NOTE: Repair and maintenance under construction contracts may be subject to the Davis-Bacon Act.

ORIGIN: The FAR groups the items covered by the law (“manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract”) under the label “supplies.”

FACT: This grouping is not found in the law and has led to the incorrect belief that items covered by Walsh-Healey must be supplies. The law does not exclude materials, supplies, articles or equipment that are manufactured or furnished in the performance of a service contract (i.e., remanufacturing.) *Once again, the inclusion of a labor law does not determine if the contract is for a supply or a service.*



ORIGIN: The SCA states that work covered by Walsh-Healey is not covered by SCA.

FACT: The exemption applies to the *work* covered by Walsh-Healey, not the contract. Both labor laws can be placed on a contract if both types of covered acquisitions are present. The contract should separate the acquisitions by line item or another method.

ORIGIN: The PEO has chosen to oversee select services in a grouping known as a "portfolio." The portfolio excludes services (such as construction and A&E) that the PEO chooses not to oversee. The portfolio has been used (incorrectly) to determine what acquisitions are services.

FACT: The PEO has authority over all service contracts; however not all services are included in the portfolio. This does not change a contract's classification as a service. The PEO manages service contracts over $100M and has PBSA approval authority for contracts over $100K.
NOTE: The PEO can choose to see any service contract regardless of the threshold or portfolio.

AF Vulnerabilities (CLS)
CLS - include SCA

- $ **Maintenance and logistics support for C-21A aircraft at various locations for 10 years**
- $ **20% of the total contract costs were service activity**
- $ **DOL concluded that the principal purpose of the contract was to furnish services and therefore subject to SCA**
- $ **Directed inclusion of wage determinations in remaining two option years - increased costs**

Fair opportunities clause

- **All multiple award contractors (MAC) shall be provided an a fair opportunity to be considered for each order, unless a specific exemption exists**

- **Logical follow-on a valid exemption, PROVIDED:**
  - **All awardees were given a chance to bid on the original order**
  - **Adequate file documentation supports**
  - **D&F (J&A approval level) IAW DPAP/DARS Sept 04 letter**

- **FAR requires rationale for follow-on be justified.**

- **Simply using the phrase “follow-on” does not meet the requirements**

Take-away's

Environment has changed - highly likely your acquisition may now be considered a services contract vs. your traditional supply

Review your specific acquisition for principal purpose and possible services applicability. No hard and fast rules, only general rules of thumb. Every acquisition is unique!

If appropriate coding is services, additional requirements applicable, i.e. AFI 63-124, MP5346.103 PBSA, SDS, DO, DoL clauses and additional reporting and approvals (MOASP)

Services contracts are more complex as a result of increased scrutiny and surveillance

Additional Guidance

- **Services TOOL**
  https://www.afmc-mil.wpafb.af.mil/HQ-AFMC/PK/pkv/services_tool2.htm

- **SAF/AQ toolkit – Far Part 37**

  https://www.safaq.hq.af.mil/contracting/affars/5337/library-5337.html

- **AFI- 63 -124 (Aug 05)**
- **http://www.e-publisihing.af.mil**

- **AFFARS MP5346.103 Quality Assurance Program**

- **Air Force Labor Advisors Office**
  https://www.safaq.hq.af.mil/contracting/laborstandards/scawgdet.htm